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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 364

KEIFER AND KEIFER, A CO-PARTNERSHIP, COMPOSED OF J. WARREN KEIFER, JR., AND OSWIN KEIFER,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, AND REGIONAL AGRICULTURAL CREDIT CORPORATION OF SIOUX CITY, IOWA, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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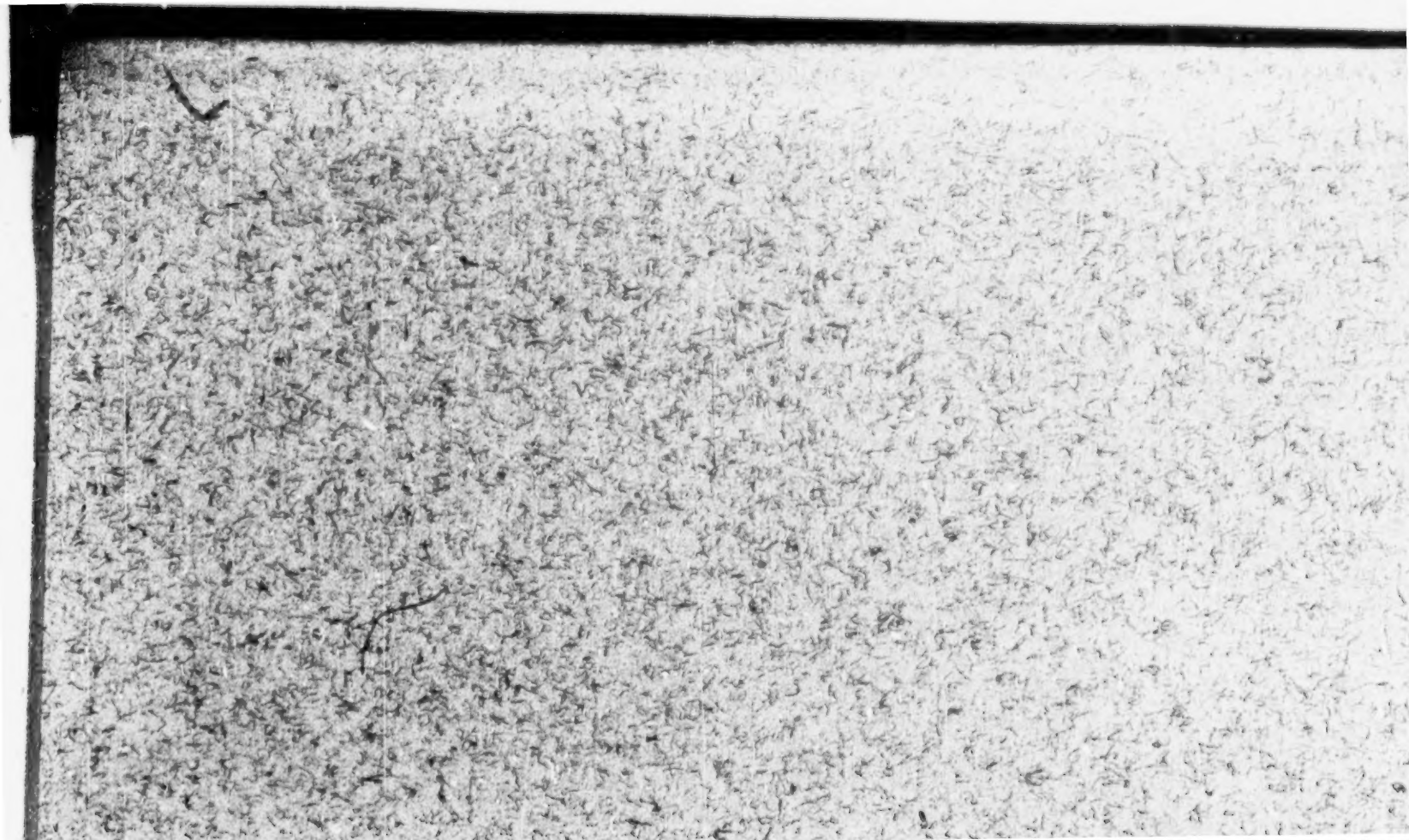

INDEX.

Subject Index.

	Page
The petition	1
I. Summary statement of the matter involved	1
II. Rulings of the lower court	3
III. Questions presented	4
IV. Reasons relied upon for the allowance of the writ	4
V. Prayer for the writ	6
Brief in support of petition for writ of certiorari	7
I. Opinions of court below	7
II. Jurisdiction	7
III. Statement of the case	7
IV. Argument	8
1. Whether the Regional is subject to suit for a tort	8
(A) An important question of Federal law which has not been, but should be, decided	8
(B) The Circuit Court decision is probably in conflict with applicable decisions of this Court	10
2. Whether the "RFC" is subject to suit as principal	17
3. Whether the District Court and Circuit Court erred	18
V. Conclusion	18

Cases Cited.

Bank of U. S. v. *Planters Bk. of Ga.*, 9 Wheaton 904, 6 L. Ed. 244	13
Casper v. *Regional Agricultural Credit Corp.* (Minn.), 278 N. W. 896	6, 9, 15, 16
Fourth Nat'l Bk. v. *Portsmouth Cotton Oil Refining Co.*, 5th C. C. A., 284 Fed. 718	17

Page

Hopkins v. *Clemson Agricultural College*, 221 U. S. 636, 31 Sup. Ct. Rep. 654 14
In re Kentucky Wagon Mfg. Co., 71 F. (2d) 802 18
Keifer and Keifer v. *R. F. C. et al.*, 22 Fed. Supp. 918 ..... 3, 7
Keifer and Keifer v. *R. F. C. et al.*, 97 F. (2d) 812 7
McCaskill v. *U. S.*, 216 U. S. 504, 30 Sup. Ct. Rep. 386, 54 L. Ed. 590 18
Olson v. *U. S. Spruce Corp.*, 267 U. S. 462, 45 Sup. Ct. Rep. 357, 69 L. Ed. 738 ..... 6, 14
Sloan Shipyards Corp. v. *U. S. Shipping Board*, 258 U. S. 549, 42 Sup. Ct. Rep. 386, 66 L. Ed. 762 ..... 6, 12
U. S. Grain Corp. v. *Phillips*, 261 U. S. 106, 43 Sup. Ct. Rep. 283, 67 L. Ed. 552 ..... 6, 12
U. S. Shipping Bd. Em. Fl. Corp. v. *Harwood*, 281 U. S. 519, 50 Sup. Ct. Rep. 372, 74 L. Ed. 1011 ..... 6, 12
U. S. v. *McCarl*, 275 U. S. 1, 48 Sup. Ct. Rep. 12, 71 L. Ed. 131 13
U. S. v. *Strang, et al.*, 254 U. S. 491, 41 Sup. Ct. Rep. 165, 65 L. Ed. 369 ..... 6, 12
U. S. v. *United Shoe Machinery Co.*, 234 Fed. 127 17

STATUTES CITED.

15 U. S. C. A., Secs. 601-617 2
Sec. 604 3
Sec. 605B (e) 2, 4, 5, 16
Executive Order No. 6084, dated March 27, 1933 4

SUPREME COURT OF THE UNITED STATES

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vs.

RECONSTRUCTION FINANCE CORPORATION, A CORPORATION, AND REGIONAL AGRICULTURAL CREDIT CORPORATION OF SIOUX CITY, IOWA, A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, The Supreme Court of the United States:

This is an application for a writ of certiorari for review of the decree of the United States Circuit Court of Appeals for the Eighth Circuit affirming a decree of the United States District Court for the District of Nebraska, Omaha Division.

I. Summary Statement of the Matter Involved.

This is an action at law brought in the District Court of the United States for the District of Nebraska, Omaha Division, by the petitioner herein against the respondents.

The petition sets forth in separate counts five causes of action. Of these five causes of action, four are brought by the petitioner as assignee while the other is brought by the petitioner in its own right. For the sake of brevity the petitioner and the petitioner's four assignors will be referred to herein as "petitioner" and the respondent Reconstruction Finance Corporation, a corporation, will be designated and referred to herein as "RFC" and the respondent Regional Agricultural Credit Corporation of Sioux City, Iowa, will be designated and referred to herein as the "Regional".

In all of the five causes of action it is alleged that petitioner delivered to the "Regional" certain cattle which the "Regional", as mortgagee, was to keep during the winter of 1934-35 and care for in such a manner as to enhance the value and condition of said cattle. The "Regional" negligently failed to keep, shelter, feed, water and care for said cattle, resulting in damage to the "petitioner" (R. 1-13 and 25-32). The respondents interposed separate demurrers to this complaint (R. 32-33) which set up substantially the following grounds: (1) That the court had no jurisdiction of the respondents or the subject matter, because the respondents were immune from suit without the permission of Congress, and (2) that the petition did not state facts sufficient to constitute a cause of action against respondents or either of them.

The "Regional" was created by the "RFC" pursuant to Section 605B(e) of the Act under which the "RFC" was organized (15 U. S. C. A., Secs. 601-617). This Act authorized the "RFC" to "create" a Regional Agricultural Credit Corporation in each of the twelve Federal Land Bank districts, with a paid up captial of not less than $3,000,000.00 to be subscribed by the "RFC" and paid out of the unexpended balance of the amount allocated and made available

to the Secretary of Agriculture. The Act provided that the officers and agents should be appointed by the "RFC". This function was later transferred to the Governor of the Farm Credit Administration, pursuant to executive order No. 6084, dated March 27, 1933, effective on May 27, 1933. The same order transferred to the Governor of the Farm Credit Administration control of the funds allocated by the Act of the Secretary of Agriculture.

The Act in express terms declared that the "RFC" should have capital stock, corporate organization, sue and be sued, a limited duration, and numerous powers and purposes (15 U. S. C. A., Sec. 604). It provided that a Regional Agricultural Credit Corporation shall have capital (not capital stock), corporate organization and power to make loans and advances for agricultural and livestock purposes, charge interest thereon and to rediscount its paper. The Act does not in express terms declare the "Regional" may sue or be sued, nor does it limit its duration.

II. Rulings of the Lower Courts.

The District Court sustained the demurrers, expressing the view that the defendants were instrumentalities of the United States and hence were immune from suit in an action sounding in tort, without the permission of Congress (R. 34). The District Court thereupon dismissed the action (R. 35) (*Keifer & Keifer* v. *R. F. C. and Regional Agricultural Credit Corp.*, 22 Fed. Sup. 918).

On appeal to the United States Circuit Court of Appeals for the Eighth Circuit that court on July 7, 1938, entered an opinion and judgment in which it held that the petition stated facts sufficient to constitute a cause of action under the Nebraska law against the defendant "Regional" but held that the transfer of the control of the "Regional" by executive order relieved the "RFC" of any liability and that the respondent "Regional" was a governmental agency

with immunity from suit and affirmed the dismissal by the District Court (R. 45-51; 97 F. (2d) 812).

III. Questions Presented.

(1) Whether the "Regional", a corporation created by the "RFC" pursuant to an act of Congress with capital of $3,000,000.00 subscribed and paid by the "RFC", whose officers and agents were appointed by the "RFC" until this function was transferred to the Farm Credit Administration by executive order No. 6084, dated March 27, 1933, and which "Regional" is authorized by said congressional act, 15 U. S. C. A. 605B(e) to have capital (not capital stock), corporate organization, and power to make loans and advances for agricultural and livestock purposes (charging interest thereon) and to rediscount its paper and which Act of Congress did not, in express terms, declare that the "Regional" might sue or be sued and which "Regional" was engaged at the time of the tortious act complained of in wintering livestock upon which the "Regional" had a chattel mortgage, upon a ranch operated by it, is subject to suit for a tort committed by it.

(2) Whether the "RFC" is subject to suit as principal for the "Regional's" tortious act on the ground, the "Regional" was agent of the "RFC" as alleged in the complaint.

(3) Whether the District Court erred in sustaining the demurrers of respondent, in denying "petitioner" leave to amend and in dismissing "petitioner's" complaint.

IV. Reasons Relied Upon for Allowance of the Writ.

Several proceedings are pending in which the questions involved in this case have been raised. Regional Agricultural Credit Corporations have been created by the "RFC" in each of the twelve Federal Land Bank districts except

the first and second and all of these "Regionals" have capital of $3,000,000.00 and have dealt as business corporations making loans to farmers and stockmen. In view of litigation already pending and likely to ensue against the "Regional" and other Regional Agricultural Credit Corporations in which the exact question would be involved it is proper that this Court at its early opportunity pass on the question of whether these corporations are subject to suit.

The Circuit Court of Appeals has construed the statute authorizing the "RFC" to form the "Regional" to mean that the "Regional" is not subject to suit. In refusing to hold otherwise the Circuit Court of Appeals decided an important question of Federal law, which has not been, but should be settled by this Court.

The Circuit Court has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

The Circuit Court of Appeals held that the "Regional" partakes of the sovereign immunity from suit. The representative decisions of this Court cited in this brief hold that other governmental corporations similarly organized are subject to suit.

One of the ten Regional Agricultural Credit Corporations, organized under the same act as the "Regional", has been held to have no immunity from suit.

There exists a conflict between the Circuit Court of Appeals and the highest State court of Minnesota upon the construction of the Federal statute, 15 U. S. C. A. 605B(e) and the immunity claimed thereunder and upon which question this Court is the final arbiter.

The Regional Agricultural Credit Corporation of Minneapolis, Minnesota, was expressly and specifically held subject to suit by the Supreme Court of the State of Minnesota in a particularly able and well reasoned decision.

Casper v. *Regional Agricultural Credit Corporation* (Minn.), 278 N. W. 896.

Representative decisions of this Court involving other similar corporations in which the corporations were held liable to suit are set forth hereafter and will be discussed more fully in the brief.

The United States Shipping Board Emergency Fleet Corporation has been held subject to suit by this Court. *Sloan Shipyards Corporation* v. *U. S. Shipping Board*, 258 U. S. 549, 42 Sup. Ct. Rep. 386, 66 L. Ed. 762; *U. S. Shipping Board Emergency Fleet Corporation* v. *Harwood*, 281 U. S. 519, 50 Sup. Ct. Rep. 372, 74 L. Ed. 1011; *U. S.* v. *Strang et al.*, 254 U. S. 491, 41 Sup. Ct. Rep. 165, 65 L. Ed. 369.

United States Grain Corporation has been held subject to suit. *U. S. Grain Corporation* v. *Phillips*, 261 U. S. 106, 43 Sup. Ct. Rep. 283, 67 L. Ed. 552.

United States Spruce Corporation has been held subject to suit. *Olson* v. *U. S. Spruce Corporation*, 267 U. S. 462, 45 Sup. Ct. Rep. 357, 69 L. Ed. 738.

V. Prayer for the Writ.

For these reasons it is respectfully submitted that this petition for writ of certiorari to review the decree and order of United States Circuit Court of Appeals for the Eighth Circuit, should be granted.

KEIFER AND KEIFER, a Co-partnership,
Composed of J. Warren Keifer, Jr.,
and Oswin Keifer, *Petitioner*,

By ERNEST B. PERRY,
ROBERT VAN PELT,
LLOYD J. MARTI,
ARTHUR E. PERRY,
JOSEPH P. O'GARA,
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. Opinions.

One opinion was delivered by the District Court. It was written by District Judge J. A. Donohoe and filed August 5, 1937. It appears on page 34 of the record and is reported in 22 Fed. Sup. 918. The opinion of the Circuit Court of Appeals (Circuit Judges Gardner, Sanburn and Thomas, Judge Gardner writing) was filed July 7, 1938, and appears at pages 44-50 of the record. It is reported in 97 F. (2d) 812.

II. Jurisdiction, Applicable Statutes and Timeliness.

A judgment was rendered by the Circuit Court of Appeals on July 8, 1938; upon July 21, 1938, a petition for rehearing was filed by the petitioner before said court and that on August 9, 1938, an order was entered by said court denying the petition for rehearing. This petition for writ of certiorari is filed under the provisions of 28 U. S. C. A., paragraph 347 (Judicial Code, paragraph 240, as amended).

III. Facts in Brief.

The facts are stated in the petition (R. 1-13 and 25-32) and in the petition for writ of certiorari. We emphasize that the Regional Agricultural Credit Corporation was formed as a corporation and was created by the "RFC"; that the "RFC" was a government-owned corporation expressly authorized to sue and be sued; that the Regional was authorized to transact ordinary business, specifically being authorized to make loans to farmers and stockmen and to charge interest therefor; that petitioner's cause of action is based upon a *tort*.

IV. ARGUMENT.

1. Whether the Regional is subject to suit for a tort.

The holding of the Circuit Court that the Regional is immune from suit is the sole basis for the dismissal of petitioner's cause of action.

(A) The question as to whether the Regional Agricultural Credit Corporations are subject to suit is an important question of Federal law which has not been, but should be, settled by this Court.

The statute authorizing the Regional and directing the "RFC" to create "Regionals" is as follows:

> "The Reconstruction Finance Corporation is further authorized to create in any of the twelve Federal Land Bank districts where it may deem the same to be desirable a Regional Agricultural Credit Corporation with a paid up capital of not less than $3,000,000 to be subscribed by the Reconstruction Finance Corporation and paid for out of the unexpended balance of the amount allocated and made available to the Secretary of Agriculture under Section 602 of this Title. Such corporations shall be managed by officers and agents to be appointed by the Reconstruction Finance Corporation under such rules and regulations as its Board of Directors may prescribe. Such corporations are hereby authorized and empowered to make loans or advances to farmers and stockmen, the proceeds of which are to be used for an agricultural purpose (including crop production), or for the raising, breeding, packing, or marketing of livestock, charge such rates of interest or discount thereon as in their judgment are fair and equitable, subject to the approval of the Reconstruction Finance Corporation, and to re-discount with the Reconstruction Finance Corporation and the various federal reserve banks and federal intermediate credit banks any paper which they acquire which is eligible for such purpose. All expenses in-

curred in connection with the operation of such corporations shall be supervised and paid by the Reconstruction Finance Corporation under such rules and regulations as the Board of Directors may prescribe."

Title 15, Section 605B (e), U. S. C. A., Sup. 107, 108.

This congressional act has never been interpreted by this Court with reference to whether Regional Agricultural Credit Corporations are subject to suit. A ruling by this Court upon this question is necessary to determine finally the claim of immunity from suit made by the Regional formed under the above cited Federal statute.

Under Section 237B of the Judicial Code, this matter is specifically made subject to the jurisdiction of this Court by certiorari: Any cause "* * * where any * * * immunity is specially set up or claimed by either party under the Constitution or any treaty or statute of, or commission held or authority exercised under the United States". This case falls directly within this sphere.

The matter is important becauses it involves a government-owned corporation of which there are at least ten exact replicas, one of such Regional Agricultural Credit Corporations, operating in ten of the twelve Federal Land Bank districts, covering almost every part of the United States. Each of said Regional Agricultural Credit Corporations has made loans and transacted business running into many millions of dollars. Litigation has and will result in which the question raised herein will be in issue. Twenty-five other parties suffered loss in the same transaction and at the same time of the petitioner's loss through acts of the Regional. There is pending in the Minnesota State court the action of *John Casper* v. *Regional Agricultural Credit Corporation of Minneapolis, Minn.*, 278 N. W. 896. In this action, which will be referred to more fully hereinafter, a decision directly in conflict with that of the

Federal District Court and the Circuit Court of Appeals in this case has been filed.

There is pending in the District Court of Douglas County, Nebraska (a State court of general jurisdiction) in the action of *Smith et al.* v. *Peters,* a proceeding in garnishment in which the closely related question of whether the "Regional" is subject to such process is involved.

Other conflicts will undoubtedly develop and arise upon this question, an affirmative decision on which is a necessary prerequisite to action against the ten corporations each operating with paid-up capital of not less than $3,000,000 each in a different Land Bank district of the United States.

This capital of not less than $30,000,000 of the various "Regionals" has been used to make loans to farmers and stockmen on which interest is charged. The purpose of the loan is for raising, breeding, fattening or marketing of livestock. Other related activities such as operating a ranch, as set forth in petitioner's cause of action, have been indulged in by the "Regional". Under such a situation, litigation has and will result as a matter of common knowledge and experience where such far flung business activities are carried on. The question of whether the "Regionals" are subject to suit should therefore be determined by this Court in this case, the first opportunity so to do.

(B) Whether the Circuit Court decision is probably in conflict with applicable decisions of this Court.

The Circuit Court held the Regional was not subject to suit. The basis for this decision was that the court held that the "Regional" partakes of the sovereign's immunity from suit. As mentioned under the previous heading, this Court has not passed upon this question directly. However, this Court has repeatedly held similar government-

owned corporations, subject to suit and held that they did not partake of the sovereign's immunity from suit.

In one of the earlier line of decisions dealing with corporations organized pursuant to an act of Congress and whose capital stock was entirely furnished with Federal funds, this Court in the cases involving the United States Shipping Board Emergency Fleet Corporation repeatedly held such corporation subject to suit.

If the basis of these decisions is fully expressed in the following excerpts from those cases, the facts in this case are so closely parallel that the holding of the Circuit Court amounts to a direct conflict with the rule announced in those cases.

> "These provisions sufficiently indicate the enormous powers ultimately given to the Fleet Corporation. They have suggested the argument that it was so far put in place of the sovereign as to share the immunity of the sovereign from suit otherwise than as the sovereign allows. But such a notion is a very dangerous departure from one of the first principles of our system of law. The sovereign properly so called is superior to suit for reasons that often have been explained. But the general rule is that any person within the jurisdiction always is amenable to the law. If he is sued for conduct harmful to the plaintiff his only shield is a constitutional rule of law that exonerates him. Supposing the powers of the Fleet Corporation to have been given to a single man we doubt if any one would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of Government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts.
>
> "If what we have said is correct it cannot matter that the agent is a corporation rather than a single

man. The meaning of incorporation is that you have a person, and as a person one that presumably is subject to the general rules of law."

Sloan Shipyards Corp. et al. v. *U. S. Shipping Board Emergency Fleet Corp., etc.*, 258 U. S. 549, 42 Sup. Ct. Rep. 386, 66 Law Ed. 762.

"For in the present case the agent is not an individual and its liability does not involve any expenditure of private funds for the satisfaction of public obligations. Its entire capital stock is government owned. Its funds and property were furnished to it by the government. They and government indemnity are alone the sources from which its obligations will be defrayed.

"It was created as a government agency to construct a fleet of vessels to meet a wartime emergency. It was in order *better to fulfill that purpose that Congress chose an instrument having the power to contract, as well as all the other powers of a private corporation,* but with its every action government controlled and all its assets supplied from government sources." (Italics ours.)

U. S. Shipping Board, etc. v. *Harwood*, 281 U. S. 519, 50 Sup. Ct. Rep. 372, 74 L. Ed. 1011.

"Generally agents of a corporation are not agents of the stockholders and cannot contract for the latter. Apparently this was one reason why Congress authorized organization of the Fleet Corporation."

U. S. v. *Strang et al.*, 254 U. S. 491, 41 Sup. Ct. Rep. 165, 65 L. Ed. 369.

"We mention these details to show that the defendant although in form a private corporation *and liable to be sued as such,* was organized and owned by the United States as an agency for public service, was not engaged in ordinary merchandising, but under Mr. Hoover's directions was performing public functions arising out of the war and its sequels." (Italics ours.)

U. S. Grain Corp. v. *Phillips*, 261 U. S. 106, 43 Sup. Ct. Rep. 286, 67 L. Ed. 552.

"Being a private corporation, the Fleet Corporation may be sued in the state or federal courts like other private corporations; • • •

"Indeed, an important, if not the chief, reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the treasury under its established procedure of audit and control over the financial transactions of the United States." (Italics ours.)

United States v. *McCarl*, 275 U. S. 1, 48 Sup. Ct. Rep. 12, 72 L. Ed. 131.

In an early decision by Chief Justice Marshall the basis of these decisions was stated in regard to a State owned and operated bank as follows:

"It is, we think, a second principle, that when a *government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character*, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and *takes the character which belongs* to its associates, and to the *business which is to be transacted.* • • • *The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation.*" (Italics ours.)

Bank of U. S. v. *Planters' Bank of Ga.*, 9 Wheaton 904, 6 L. Ed. 244.

In an excellent opinion, Judge Lamar in an early case wrote the opinion of this Court holding that the Clemson Agricultural College although a State owned and maintained institution, was subject to suit for its *torts* and expressed the basis therefor as follows:

"Besides, neither a state nor an individual can confer upon an agent authority to commit a tort, so as to

excuse the perpetrator. In such cases the law of agency has no application, the wrongdoer is treated as a principal, and individually liable for the damages inflicted, and subject to injunction against the commission of acts causing irreparable injury.

"If the state had in so many words granted the college authority to take or damage the plaintiff's property for its corporate advantage without compensation, the Constitution would have substituted liability for the attempted exemption. But the state of South Carolina passed no such act, and attempted to grant no such immunity from suit as is claimed by the college. On the contrary, the statute created an entity, a corporation, a justic person, whose right to hold and use property was coupled with the provision that it might sue and be sued, plead and be impleaded, in its corporate name.

"For protecting the bottom land, the college, *for its own corporate purposes and advantages,* constructed the dyke. In so doing it was not acting in any governmental capacity. *The embankment was in law similar to one which might have been built for private purposes by the plaintiff* on the other side of the river. If he had there constructed a dyke to protect his farm, and in so doing had taken or damaged the land of the college, he could have been sued and held liable. In the same way, and on similar principles of justice and legal liability, the college is responsible to him if, for its own benefit, and for protecting land which it held and used, it built a dyke which resulted in taking or damaging the plaintiff's farm. 2 Dill. Mun. Corp. 4th ed. #966, p. 1180." (Italics ours.)

Hopkins v. *Clemson Agricultural College,* 221 U. S. 636, 31 Sup. Ct. Rep. 654.

And this Court has held the government owned United States Spruce Corporation subject to suit.

Olson v. *U. S. Spruce Corp.,* 267 U. S. 462, 45 Sup. Ct. Rep. 357, 69 L. Ed. 738.

Various other Federal Corporations have been held subject to suit and not immune from suit on the basis of partaking of the sovereign immunity from suit. Many decisions involving these questions in regard to particular governmental owned corporations have not reached this Court.

In addition to being in probable conflict with the applicable authorities of this Court above cited, the decision of the Federal District Court and the Circuit Court of Appeals in this action are in direct conflict with the decision of the Minnesota State Supreme Court as shown from the following excerpts from the opinions of that court.

> "Defendant cites and relies on Keifer & Keifer *v.* Reconstruction Finance Corporation et al., 22 F. Supp. 918, decided August 5, 1937, by the United States District Court, District of Nebraska, holding that a regional agricultural credit corporation may not be sued without the consent of Congress and that Congress has not given such consent. With utmost deference to the court which decided that case, we refuse to follow it because we think congressional consent to suit has been given."
>
> *Casper* v. *Regional Agr. Credit Corp.*, 278 N. W. 896 (Minn.).

In stating the question the court in the cited case calls attention to the fact that the question must be decided by each court as it appears to that court at that time in view of the fact that no general rule has been laid down by this Court.

> "Whether federal agencies are subject to suit and to what extent is a question of congressional intent. Federal Land Bank *v.* Priddy, 295 U. S. 299, 55 S. Ct. 705, 706, 79 L. Ed. 1408. The general rule is that the sovereign immunity of the United States does not extend to its agents, individual or corporate. Sloan Shipyards Corp. *v.* U. S. Fleet Corp., 258 U. S. 549, 42 S. Ct. 386, 388, 66 L. Ed. 762; United States *v.* Lee, 106 U. S. 196, 1 S. Ct. 240, 27 L. Ed. 171; Belknap *v.* Schild,

161 U. S. 10, 16 S. Ct. 443, 40 L. Ed. 599; 26 R. C. L. 1459 #63, note 15; note, 15 Ann. Cas. 1109. No rule has been laid down by the Supreme Court of the United States by which the congressional intent may be determined in a particular case."

Casper v. *Regional Agr. Credit Corp.*, 278 N. W. 896 (Minn.).

After a very exhaustive review of the decisions of this Court and other Federal courts in regard to government created corporations which claim immunity from suit, the Minnesota Supreme Court gave the reasons for its decision as follows:

"The inference that defendant is subject to suit is supported by the fact that its creator, the Reconstruction Finance Corporation, is itself subject to suit.

"The rule of nonimmunity has been applied without respect to the law under which the corporation was organized.

Casper v. *Regional Agr. Credit Corp.*, 278 N. W. 896 (Minn.).

The decision of the Minnesota Supreme Court is stated succinctly in Syllabus 2:

"Regional agricultural credit corporations are not immune from suit. Reconstruction Finance Corporation Act #201 (e), 15 U. S. C. A. #605b(e)."

Your petitioners respectfully submit that the final determination by this Court of the questions of law involved in this case are of the utmost importance to the right of all parties dealing with the Regional Agricultural Credit Corporations which are organized and existing throughout the United States.

The decision of the Circuit Court of Appeals herein is not only contrary to law as announced by this Court in its earlier decisions, but is contrary to the sound principles that the immunity of the sovereign from suit should not be

extended except upon clearly expressed congressional authority.

Unless the errors in the decision of the Circuit Court be corrected by this Court, the effect will be to create regrettable confusion regarding questions of law which are of the utmost importance to all farmers and stockmen and other persons who have had dealings or contracts with any of the various Regional Agricultural Credit Corporations.

2. Whether the "RFC" is subject to suit as principal for the "Regional's" tortious acts.

The "RFC" is a corporation expressly made subject to suit by the act creating it. The "RFC" was authorized to create the "Regional" as a corporation. The "RFC" did not have the "Regional" created under the laws of one of the States but issued a charter direct to the Regional (R. 11, 12). Under the charter the "Regional" was to be "managed by officers and agents appointed by the 'RFC', under such rules and regulations as the Board of Directors of the 'RFC' may prescribe. * * *"

The "Regional" as a corporation still operates under that charter. The "RFC" furnished the capital and still retains the above duties by virtue of the "Regional's" charter. The President's proclamation, referred to in the Circuit Court of Appeals opinion and in this brief, does not amend this charter. This presents the question as to whether or not the "Regional" is an agent of the "RFC" under a long line of cases recognizing the agency of the controlled corporation under such a situation. We urge that the "RFC" is subject to suit as the principal, for the tortious acts of its agent, the "Regional". To this effect see:

U. S. v. *United Shoe Machinery Co.*, 234 Fed. 127;

Fourth Nat'l Bank of Montgomery v. *Portsmouth Cotton Oil Refining Corp.*, 5th C. C. A., 284 Fed. 718, affirming 280 Fed. 879;

Centmont Corp. v. *Marsch* (C. C. A. Mass.), 68 F. (2d) 460;

In re Kentucky Wagon Mfg. Co., 71 F. (2d) 802;

McCaskill v. *U. S.*, 216 U. S. 504, 30 Sup. Ct. Rep. 386, 54 L. Ed. 590.

3. Whether the District Court erred.

The order of the District Court sustaining the demurrer of respondent's and dismissing petitioner's cause of action, as well as the refusal to allow petitioner to amend its petition, was assigned as error on appeal to the District Court. If petitioner's contentions herein are correct, this Court should upon taking jurisdicton of this action reverse this order of the District Court as well as the decision and order of the Circuit Court.

V. Conclusion.

These are questions which this petitioner suggests should be definitely settled by this Court. For these reasons it is respectfully submitted that this petition for writ of certiorari to review the decree and order of the United States Circuit Court of Appeals for the Eighth Circuit should be granted.

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